

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 8793 of 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Petitioner(s)
Versus
MAHADEVBHAI KARSANBHAI DESAI - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
MR MA PAREKH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE**Date : 27/10/2005****CAV JUDGMENT**

1.By filing this petition, the petitioner has challenged the judgment and award dated 9.6.1999 passed by the Presiding Officer, Labour Court, Ahmedabad in Reference (LCA) No. 280 of 1995, by which the Labour Court has

directed the petitioner to reinstate the respondent - workman to his original post with full back wages.

2.It is the case of the petitioner that the respondent was working with Ahmedabad Municipal Transport Service and he remained absent unauthorizedly for 301 days between 1st January, 1992 to 31st December, 1992 and also continued to remain absent after December, 1992. Ultimately, the respondent - workman was issued the charge sheet dated 17.02.1993. In response to the charge sheet, the respondent filed reply on 21.07.1993 mentioning that he remained absent for a long period because of his ill health. Thereafter, the full fledged departmental inquiry was initiated against the respondent. In the affidavit filed by the respondent, he has admitted the charges levelled against him. Ultimately, the inquiry officer held that the charges levelled against the respondent - workman are proved. Thereafter, the notice was issued to respondent and ultimately passed the dismissal order on 11.08.1994.

3.Being aggrieved and dissatisfied with the said dismissal order dated 11.08.1994, the respondent - workman raised the industrial dispute which was referred to the Labour Court, Ahmedabad for adjudication and numbered as Reference (LCA) No.280 of

1995. Ultimately, the Labour Court passed the impugned judgment and order dated 09.06.1999 directing the petitioner to reinstate the respondent - workman to his original post with full back wages and also imposed the punishment of withholding of two increments upon the respondent. Being aggrieved and dissatisfied by the said judgment and award dated 09.06.1999, the petitioner has preferred the present petition under Article 226 and 227 of the Constitution of India.

4. Mr. Munshaw, learned advocate appearing for the petitioner has submitted that the respondent - workman has remained absent unauthorizedly for a long period. He further submitted that within a period of 12 months, the respondent had remained absent for a period of 301 days without any satisfactory reason and for remaining absent unauthorizedly, no documentary evidence like medical certificate or any other record was produced before the authority. He submitted that when the respondent has admitted the charges levelled against him, the Labour Court ought not to have passed the impugned judgment and order directing the petitioner to reinstate the respondent - workman in service with full back wages. He further submitted that the approval application filed by the petitioner was not withdrawn

but it was only contended that as the reference is pending before the Labour Court against the dismissal order, the approval application may not be proceeded with and disposed of. It is further submitted that even the past record of the respondent is not satisfactory and, therefore, considering all the facts and circumstances of the case, the Labour Court ought to have confirmed the order of dismissal. In support of his submissions, Mr. Munshaw has relied upon the judgment of this Court in the case of Maganbhai L Chauhan V/s Divisional Controller, GSRTC, reported in 1999 (1) GLH 527. It is, therefore, requested to allow the present petition.

5. On the other hand, Mr. M. A. Parekh, learned advocate appearing on behalf of the respondent - workman has opposed this petition and has submitted that because of sickness of his mother who was suffering from cancer, the respondent - workman could not remain present on duty. He further submitted that merely because the respondent - workman remained absent unauthorizedly as contended by the learned advocate appearing for the petitioner, harsh punishment of dismissal from service cannot be imposed upon the respondent and considering this aspect, the Labour Court has rightly allowed the

reference and set aside the dismissal order passed by the petitioner. It is, therefore, requested to dismiss the present petition.

6.I have given my thoughtful consideration to the submissions made by the learned advocates appearing for the respective parties and have also perused the material placed on record.

7.It is required to be noted that the respondent is an employee of the petitioner - Ahmedabad Municipal Transport Service and looking to the nature of service, if the respondent was not on duty, it would affect the work of the petitioner. It can also be seen that the respondent has remained absent unauthorizedly for a period of 301 days in 12 months who has accepted the charges levelled against him even before the Labour Court also. Further, the respondent has failed to produce the satisfactory evidences for remaining absent unauthorizedly such as medical certificate. It is also required to be noted that while setting aside the dismissal order, the Labour Court has not assigned any reason as to why it has interfered with the dismissal order. However, the Labour Court has specifically observed that the punishment of dismissal is on a higher side and, ultimately set aside the dismissal

order and directed the petitioner to reinstate the respondent - workman in service. When the respondent - workman has remained absent unauthorizedly and has also admitted his guilt in the full fledged departmental proceedings, the Labour Court while interfering with the dismissal order was required to assign the reasons which are acceptable.

8. Considering the facts and circumstances of the case and the judgment referred to above, the petition is required to be allowed.

9. Under the circumstances, the petition is allowed. The impugned judgment and award dated 09.06.1999 passed by the Presiding Officer, Labour Court, Ahmedabad in Reference (LCA) No. 280 of 1995 is quashed and set aside. Rule is made absolute with no order as to costs.

(SHARAD D DAVE, J)

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